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10/664,039	09/17/2003	John W. Stockstill	MCOG-0002-UT1	2608
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JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030			EXAMINER WILSON, JOHN J	
			ART UNIT 3732	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/664,039  
Filing Date: September 17, 2003  
Appellant(s): STOCKSTILL, JOHN W.

**MAILED  
OCT 29 2007  
GROUP 3700**

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Mark J. Gutttag  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 20, 2007 appealing from the Office action mailed July 18, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final filed September 18, 2006 is entered and has overcome the rejection of claims 6, 8 13 and 15 under 35 U.S.C. 112, second paragraph.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,836,810	Asum	11-1998
6,386,873	Blank	5-2002
4,690,642	Kyotani	9-1987

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-6, 8, 10-13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asum (5836810) in view of Blank (6386873). Asum shows an interproximal strip 22, Fig. 7, having a plurality of zones comprising a smooth central first zone 25, a second abrasive zone 24 next to the first zone, and a third abrasive zone 24 on the opposite side of the first zone. Asum does not show a fourth abrasive zone on a second side. Blank teaches that it is known to use abrasive on one or on both sides, column 4, lines 2-3. It would be obvious to one of ordinary skill in the art to modify Asum to include abrasive on both sides as taught by Blank in order to deliver the abrasive action to the desired locations. As to claim 5, Asum teaches using different abrasives, column 3, lines 60-64. As to claims 10 and 17, the method steps are obvious uses of the shown structure to one of ordinary skill in the art.

Claims 7, 9, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asum (5836810) in view of Blank (6386873) as applied to claims 4, 5, 11 and 12 above, and further in view of Kyotani (4690642). The above combination

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teaches using different abrasives and using abrasives on both sides, however, the above combination does not show using different abrasives on different sides. Kyotani teaches using different abrasives on one side, Fig. 4, or on different sides, Fig. 5. It would be obvious to one of ordinary skill in the art to modify the above combination to include using different abrasives on different sides as shown by Kyotani in order to apply the desired degree of abrasive to the desired locations. The specific locations of different abrasives is an obvious matter of choice in the location of known structures to one of ordinary skill in the art in order to abrade the desired area to a desired degree.

#### **(10) Response to Argument**

Appellant argues that applicant was denied statutory rights under the Administrative Procedures Act because appellant requested an Affidavit/Declaration under 37 C.F.R. 1.104(d)(2) and such was not provided. This argument is disagreed with because the rejection is not based on knowledge of the examiner, instead, it is based on evidence showing the claimed elements and motivation suggesting the applied combination. Sufficient evidence for a prima facie case of obviousness under 35 U.S.C. 103(a) has properly been provided.

Appellant argues that there is no motivation for the combination of Asum with Blank as applied in the rejection, that nowhere is there provided a proper basis for the combination, and that the rejection fails to provide textual support or any evidence for the combination. This argument is disagreed with because, as pointed out in the rejection, Blank teaches "The blade member may also be abrasive on one side, or both

sides", column 4, lines 2 and 3. This teaching, in the art, clearly suggests to one of ordinary skill in the art the placement of the abrasive would have been obvious. It is also held that the results of placing the adhesive in different locations would have been predictable because one of ordinary skill in the art would understand that using the locations with abrasive would abrade while locations without abrasive would not. The suggestion or motivation to combine the references or teachings can derive solely from the existence of a teaching, which one of ordinary skill in the art would be presumed to know, and the use of that teaching to solve the same or similar problem which it addresses. *In re Wood*, 599 F.2d 1032, 1037, 202 USPQ 171, 174 (CCPA 1979).

Appellant argues that the combination of Asum with Blank is improper hindsight because of the lack of evidence and motivation as argued above. This argument is disagreed with for the same reasons as given above.

Appellant argues that not all the features of claim 17 have been met because the limitation "increasing said created space by abrading said teeth with said first and second faces of said interproximal strip" has not been shown. This step is held to be obvious in view of the applied art because the prior art teaches creating a space by abrading and it is general knowledge that if a space is created by abrading, that the space can be further enlarged by further abrading.

Appellant repeats the same arguments for the combination of Asum in view of Blank and further in view of Kyotani. These arguments are disagreed with for the same reasons stated above, and because, Kyotani teaches one skilled in the art that different

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abrasives can be used on the same or different sides, Figs. 4 and 5 of Kyotani. This teaching in the art is held to be suggestive of the combination.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

/John J Wilson/  
Primary Examiner  
Art Unit 3732

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